

Ill.C.C. Docket No. 01-0400

1. On May 21, 2001, Complainant filed a formal Complaint with the Illinois Commerce Commission (the “Commission”) against Peoples Gas (the “Complaint”).
2. The Complaint contains 54 assertions which allege that:
  - A. The Complainant’s gas service to his building at 5125 West Washington in Chicago was improperly terminated in October 2000. The Complaint requests that the Commission grant Complainant monetary damages, attorney’s fees and court costs for the alleged improper termination of his gas service. The complaint also requests that Peoples Gas be required to provide “a letter to each of his tenants explaining that Peoples Energy/Peoples Gas made an error when it terminated his service.”
  - B. The Complainant’s gas bills for his account at 5125 West Washington are not correct. The Complaint requests an accounting of his gas bills to correct this alleged erroneous billing.

3. All of the allegations in the Complaint related to the alleged improper termination of gas service and the requests for relief related to those allegations are moot and should be stricken from the Complaint.

4. When ruling on a motion to dismiss [or to strike], all well pleaded facts in the complaint are admitted and taken as true. Reuben H. Donnelley Corp. v. Brauer, 275 Ill.App.3d 300, 302, 655 N.E.2d 1162, 1165, 211 Ill. Dec. 779, \_\_\_\_ (1<sup>st</sup> Dist., 1995).

5. “An issue is moot if no actual controversy exists or where events occur which make it impossible for the court to grant effectual relief.” Dixon v. Chicago and North Western Transp. Co., 151 Ill.2d 108, 116, 601 N.E.2d 704, 708 (1992). A court “should not review cases merely to establish a precedent or to guide future litigation”. Id.

5. The allegations in the Complaint, if taken as true, show that events have occurred which make it impossible for the Commission to Grant effective relief.

6. The Complaint alleges that the Complainant’s service was improperly terminated in October of 2000. (Complaint, p. 3, paragraph 1).

7. The relief that the Commission can grant for the improper discontinuation of service is to order Peoples Gas to restore service.

8. The Complaint admits that service was “restored” within one week of the alleged improper disconnection in October 2000. (Complaint, p. 4, paragraph 24).

9. The restoration of service is an event that has made it impossible for the Commission to grant effective relief to the Complainant.

10. Furthermore, the Commission cannot grant the monetary relief requested by the Complainant. The Illinois Commerce Commission derives its power from the statute and has no power except such as is thereby expressly conferred upon it. Blackhawk Motor Transport Company v. Illinois Commerce Commission, 398 Ill. 542, 552, 76 N.E.2d 478, 484 (1947). There is no grant of authority in the Public Utilities Act, 220 ILCS 5/1-101, et seq. (the “Act”), or in any other act of the State of Illinois that gives the Commission the power to grant monetary

damages, attorney's fees or court costs to the Complainant for the alleged improper termination of gas service.

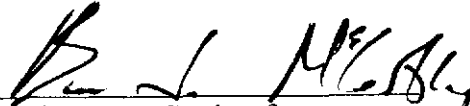
11. 220 ILCS 5/5-201, cited as support for the damages claims made by the Complainant (Complaint p. 5, paragraph 52), does not authorize the Commission to grant monetary awards, attorney's fees or court costs to Complainants in formal complaints before the Commission. That section only empowers the courts of the State of Illinois to grant such relief, not the Commission.

12. The Commission should not grant the "letter-to-tenants" relief requested by the Complainant. A court "should not review cases merely to establish a precedent or to guide future litigation". Dixon, 151 Ill.2d 108 at 116, 601 N.E.2d at 708. It is clear (from the statements of his counsel in the presence of the Administrative Law Judge off the record at the status hearing on June 26, 2001) that the Complainant wishes to pursue his damage claims in the Circuit Court because he cannot obtain the monetary relief he seeks from the Commission. By requesting that the Commission require Peoples Gas to write letters admitting the alleged error, the Complainant is seeking to obtain an admission that can be used as a guide in any future proceeding before the Circuit Court. To provide such relief by itself would be tantamount to reviewing a case "merely to....guide future litigation" and, therefore, would contradict the rule in Dixon.

12. Because the Commission cannot grant effectual relief to the Complainant related to the Discontinuation Allegations due to the fact that the Complainant has gas service and the Commission lacks the authority to grant monetary damages, attorney's fees and court costs, the Discontinuation Allegations, and all relief requested pursuant to those allegations should be stricken as moot.

WHEREFORE, Peoples Gas respectfully requests that the Illinois Commerce Commission enter an order striking as moot all of the allegations in the Complaint related to the alleged improper discontinuance of service and all prayers for relief requesting monetary damages, attorney's fees and court costs.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "B. J. McCarthy", written over a horizontal line.

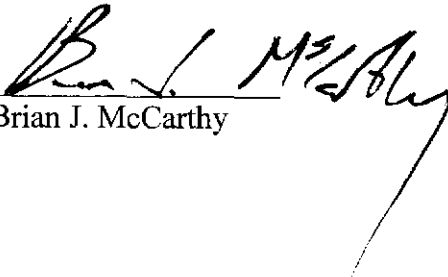
Brian J. McCarthy, for  
The Peoples Gas Light and Coke Company

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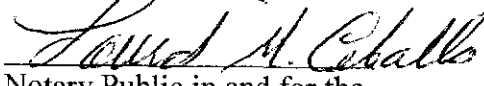
STATE OF ILLINOIS    )  
                                  ) SS  
COUNTY OF COOK     )

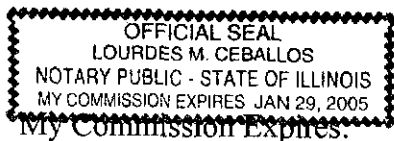
VERIFICATION

I, Brian J. McCarthy, being first duly sworn upon oath, depose and say that I have read the above and foregoing Respondent's Motion To Strike by me subscribed and know the contents thereof; and that said contents are true in substance and in fact.

  
\_\_\_\_\_  
Brian J. McCarthy

SUBSCRIBED AND SWORN  
before me this 5<sup>th</sup> day  
of OCTOBER, 2001.

  
\_\_\_\_\_  
Notary Public in and for the  
County of Cook, Illinois

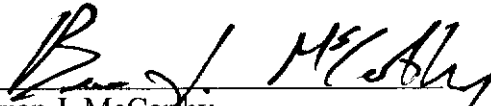


01-29-2005

CERTIFICATE OF SERVICE

I hereby certify that I have this day served this Respondent's Motion to Strike by personal delivery or by causing a copy to be placed in the United States mail with first class postage affixed, addressed to the Complainant and the Hearing Examiner in Docket No. 01-0400.

Dated at Chicago, Illinois this 5th day of October, 2001.

  
\_\_\_\_\_  
Brian J. McCarthy  
An Attorney for  
The Peoples Gas Light  
and Coke Company

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

CHARLES B. DAVIS,	)	
	)	
Complainant,	)	
	)	
vs.	)	No. 01-0400
	)	
THE PEOPLES GAS LIGHT AND	)	
COKE COMPANY,	)	
	)	
Respondent.	)	

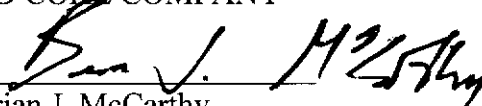
**NOTICE OF FILING**

TO: David Fish, Esq. The Collins Law Firm 1770 N. Park St., Suite 200 Naperville, Illinois 60563	Administrative Law Judge Leslie Haynes Illinois Commerce Commission 160 North LaSalle Street, Ste. C-800 Chicago, Illinois 60601-3104
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PLEASE TAKE NOTICE that on this date Respondent in the above-captioned case sent by U.S. mail for filing with the Illinois Commerce Commission, 527 East Capitol Avenue, P.O. Box 19280, Springfield, Illinois 62701, an original of Respondent's Appearance and an original of Respondent's Motion to Strike.

DATED: October 5, 2001

THE PEOPLES GAS LIGHT  
AND COKE COMPANY

By:   
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one of its attorneys

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